

THE HONOURABLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.21377 of 2003

%04.10.2004

P. Narayana Reddy, S/o. Narasa Reddy,
R/o. Thimmapur Village, Morthan Mandal,
Nizamabad District.

...PETITIONER

Vs.

- \$ 1 The Mandal Evenue Officer,
Morthad Mandal, Nizamabad District.
- 2 The District Collector, Nizamabad District.
- 3 The Mandal Development Officer,
Morthad Mandal, Nizamabad District.
- 4 Kanaka Ganga Bai W/O Narasaiah,
R/O Thimmapur Village, Morthad Mandal,
Nizamabad District.

...RESPONDENTS

! Counsel for the petitioner: MR.D.BHASKAR REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: MR.J.SATYA PRASAD

<Gist :

>Head Note:

? Cases referred:

AIR 1999 SC 22

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 21377 of 2003

Between:

P.Narayana Reddy, S/O Narasa Reddy,
R/O Thimmapur Village, Morthad Mandal,
Nizamabad District.

..... PETITIONER

AND

- 1 The Mandal Revenue Officer,
Morthad Mandal, Nizamabad District.
- 2 The District Collector, Nizamabad District.
- 3 The Mandal Development Officer,
Morthad Mandal, Nizamabad District.
- 4 Kanaka Ganga Bai W/O Narasaiah,
R/O Thimmapur Village, Morthad Mandal,
Nizamabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, more in particular writ of mandamus declaring the proceedings No.24/1901/2003 dated 30-06-2003 and the consequential seizure order vide panchanama dated 25-09-2003 of the Mandal Revenue Office Morthad, as being illegal, arbitrary, unconstitutional and violative of principles of natural justice and consequently set aside the same.

Counsel for the Petitioner: MR.D.BHASKAR REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: MR.J.SATYA PRASAD

The Court made the following:

ORDER:

The petitioner herein is resident of Palem village. He is the pattadar of the land in Survey No.297 of Palem village. He dug a bore well in 1990, obtained service connection from Electricity Department and using the bore well for irrigating his land. It appears the fourth respondent gave a complaint to the first respondent alleging that the petitioner dug a bore well at a distance of 3.5 meters from the bore well of the fourth respondent without obtaining any permission. Therefore the first respondent by impugned notice/order dated 30.6.2003 directed the petitioner not to draw the water until further orders. Assailing the same, the petitioner filed the present writ petition raising two grounds: that unless and until the area from which the water can be pumped is notified under Section 9 of the A.P. Water, Land & Trees Act, 2002 (the Act, for brevity), there cannot be imposition of distance rule for digging bore wells; and that impugned order was not preceded by any notice which will cause prejudice to the petitioner.

The writ petition is opposed by the fourth respondent. In the Counter affidavit filed accompanying WVMP No.3694 of 2003, two grounds urged in opposition. First, the petitioner has effective alternative remedy under Section 27 of A.P. Water, Land and Trees Rules, 2002 (the Rules, for brevity), and therefore, the writ petition is not maintainable. Secondly, the impugned order itself is notice requiring the petitioner to submit explanation to the notice and as the petitioner failed to avail such opportunity, he cannot be permitted to urge other grounds in this writ petition.

Though the Interlocutory applications being WVMP No.3694 of 2003 and WPMP No.10703 of 2004 are listed, the writ petition itself has been finally heard and being disposed of at the Interlocutory stage with the consent of the learned Counsel for the petitioner and learned Counsel for the Respondents.

The Act is intended to conserve land, water and tree resources. Under Section 10 of the Act, any person, who intends to sink a well for purpose of irrigation or drinking water shall have to obtain permission from the authority constituted under Section 3 of the Act. Under the Rules, certain restrictions are imposed in sinking bore wells.

One such restriction is prohibition for sinking the wells within a distance as specified. What would happen if the provisions of the Act are contravened? Section 15 reads as under:

15. Closure of wells

1. Wherever it appears to the Authority that any well has been sunk or is being sunk or water has been extracted or is being extracted in contravention of any of the provisions of this Act, the Authority or any officer duly authorized by it in this behalf, may enter upon that land, remove obstructions, if any, close the pumping of the water, disconnect the power supply, seize any material or equipment used in connection with such extraction of water and take any such action, as may be required to stop such extraction and may by order require the owner or the person in possession of the well to close or seal-off the well at his expense and in such manner as the Authority may specify in such order and such owner or person shall comply with such order.
- (2) Where such owner or person fails to comply with any order made under sub- section (1), the Authority may after giving such owner or person due notice in that behalf enter upon the land and close or seal off the well and the cost incurred thereof shall be recoverable from such owner or person as arrears of land revenue.

A plain reading of section 15 would show that when it is brought to the notice of the authorities and that the provisions of the Act have been contravened in sinking a bore well, a provisional order has to be passed requiring owner or the person in possession of the well to close or seal off the well. When the provisional order is not complied with, the authority under the Act may then have to issue the owner or person due notice in that behalf and pass order to close or seal off the well. The requirement of issuing notice is conspicuous by its passing under Sub-section (1) of Section 15. Though Sub-section (2) of Section 15 specifically require the authority to give a notice to the owner or the person using the bore well before passing order of closure or seizure. Reading Sub-sections (1) and (2) of Section 15 together, this Court is of the considered opinion that the requirement of notice would be read into Sub-section (1) of Section 15 as well. It is well settled that a provision of law made by Legislature has to be interpreted in tune with principles of natural justice keeping in view the doctrine of fairness. Indeed under sub-section (1) of Section 15, drastic powers are conferred on the authority to close the pumping of the water, disconnect the power supply, seize any material or equipment used in connection with such extraction of water. It would not be possible to countenance any submission that Legislature never intended that the authority should act in fairness. Principles of natural justice being part of the fairness, it is also incumbent on the authority to issue a preliminary notice before passing a provisional order under sub-section (1) of Section 15. If such a requirement is not read into sub-section (1) of Section 15, in a given case, the Officer can as well disconnect power supply or close bore well. In this connection, a reference may be made to Rule 15 of the Rules, which reads as under:

15. Taking over of well to ensure drinking water:

1. The Authority may by a general or special order shall authorize the Designated Officer

to identify such wells as required to ensure supply of drinking water to local population and shall take over such wells.

2. On identification of the wells, the Designated Officer shall serve or cause to serve an order of requisition on the owner of the well specifying the period of such requisition. The Designated Officer for sufficient reasons, may extend such period of requisition.
3. On requisition, the owner of the well shall not draw water for any other purpose other than drinking for his own use.
4. If the well so requisitioned is the only source of irrigation and if the owner is solely dependent on agriculture for his livelihood, the owner shall be compensated for the loss of livelihood. The quantum of compensation shall be decided by the District Collector in consultation with the agriculture department based on the crops raised during the same period in the previous three years by the owner utilizing the water from the well.

Rule 15 of the Rules authorises any authority by a general or special order and in case of emergency so as to ensure supply of drinking water to local population take over such bore well in which event the owner of the bore well will be entitled to be compensated for the agreed loss. The only situation where without notice the bore well can be seized is to ensure the supply of drinking water to the local population in emergency. That being the position, the issuance of notice before passing provisional order under Section 15 (1) of the Act must be held as mandatory requirement. In this case, the impugned notice/order was not issued in such circumstances, and therefore, unsustainable. This Court is also not impressed with the submission of the learned Counsel for the fourth respondent that the petitioner has effective alternative remedy. But Section 33 of the Act would not bar a writ petition as it is well settled that when principles of natural justice are violated or fundamental rights are infringed or the action is grossly against the provisions of the Act, it is not a bar to exercise the power under Article 226 of the Constitution of India (see **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**).

The matter for the above reasons shall stand remitted to the Mandal Revenue Officer, Morthad with a direction to issue notice to the petitioner and respondents No.4 and decide the matter without being influenced by any of the observations made herein above. It shall be open to the petitioner to submit explanation after receiving notice from Mandal Revenue Officer.

The writ petition, with the above observations and directions, is disposed of.

YS

L.R. Copy be marked.

To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

- 1 The Mandal Revenue Officer,
Morthad Mandal, Nizamabad District.
- 2 The District Collector, Nizamabad District.
- 3 The Mandal Development Officer,
Morthad Mandal, Nizamabad District.
- 4 The Under Secretary, Union of India, Ministry of Law, Justice and
Company Affairs, New Delhi.
- 5 The Secretary, A.P.Advocates Association Library, High Court
Buildings, Hyderabad.
- 6 8 LR copies.
- 7 Two CCs to the Government Pleader for Revenue, High Court
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- 8 Two C.D. Copies.